

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Richard Allen Smuda,

Plaintiff,

vs.

Case No. 3:16-cv-335

REPORT AND RECOMMENDATION¹

Leann Bertsch, Director, North Dakota
Department of Corrections and
Rehabilitation, in her official capacity;
Dr. Rosalie Etherington, Superintendent
of the North Dakota State Hospital, in her
official capacity; Jonathon Byers, State's
Attorney General in his official capacity;
Steven Larson, BA Human Relations
Counselor State Penitentiary in his official
capacity; and Christopher D. Jones,
Executive Director, North Dakota
Department of Human Services, in his
official capacity,

Defendants.

Smuda requests default judgment, asserting that the defendants did not answer the complaint within sixty days after the court directed the Clerk to amend the caption. (Doc. #86). He further asserts that, although an answer was filed, that was done only on behalf of an earlier named defendant—Maggie Anderson—since the defendants made a clerical error in the caption of their answer. Id.

¹ A pending Report and Recommendation recommends that the defendants' motions to dismiss for insufficient service of process, (Doc. #33; Doc. #40), be denied, that Smuda's motions for default judgment, (Doc. #43; Doc. #45), be denied, and that Smuda's motion to rule on the aforementioned motions, (Doc. #51), be granted. (See Doc. #63). Another pending Report and Recommendation recommends that the defendants' motion for judgment on the pleadings, (Doc. #59), be granted, that Smuda's motion to strike, (Doc. #73), be found moot, and that Smuda's complaint, (Doc. #1), be dismissed. (See Doc. #82). This Report and Recommendation addresses Smuda's third motion for default judgment, (Doc. #86), which he filed after the earlier Reports and Recommendations were filed.

On March 23, 2017, the court ordered that, pursuant to Federal Rule of Civil Procedure 25(d), the Clerk amend the caption to substitute successors for defendants no longer serving as public officers. (Doc. #59). The court further directed the Clerk to serve the defendants. Id.

On April 19, 2017, the defendants answered the complaint. (Doc. #64). While the defendants erroneously included “Maggie Anderson, et al.” in the caption of their answer, the answer was made on behalf of the currently named defendants. (See Doc. #64) (stating that “[d]efendants Rosalie Etherington, Christopher D. Jones, Leann Bertsch, Jonathan Byers, and Steven Larson (collectively the Defendants) answer Plaintiff Richard Smuda’s Complaint”). Smuda’s assertion that the defendants failed to answer the complaint is without merit. It is therefore **RECOMMENDED** that Smuda’s motion for default judgment be **DENIED**.

Dated this 19th day of July, 2017.

/s/ Alice R. Senechal
Alice R. Senechal
United States Magistrate Judge

NOTICE OF RIGHT TO OBJECT²

Any party may object to this Report and Recommendation by filing with the Clerk of Court no later than **August 2, 2017**, a pleading specifically identifying those portions of the Report and Recommendation to which objection is made and the basis of any objection. Failure to object or to comply with this procedure may forfeit the right to seek review in the Court of Appeals.

² See Fed. R. Civ. P. 72(b); D.N.D. Civ. L.R. 72.1.